

9-29-2000

Trends. Discretion, No Discretion: Travails of the Immigration and Naturalization Service

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Recommended Citation

Editor (2000) "Trends. Discretion, No Discretion: Travails of the Immigration and Naturalization Service," *International Bulletin of Political Psychology*. Vol. 9 : Iss. 11 , Article 6.

Available at: <https://commons.erau.edu/ibpp/vol9/iss11/6>

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International Bulletin of Political Psychology

Title: Trends. Discretion, No Discretion: Travails of the Immigration and Naturalization Service

Author: Editor

Volume: 9

Issue: 11

Date: 2000-09-29

Keywords: Discretion, Immigration, INS

After an extended hue and cry against the United States (US) Immigration and Naturalization Service (INS) for enforcing public laws that amend the 1952 Immigration and Nationality Act--at times mandating the deportation of immigrants who (save for some minor indiscretion before a law was passed) have been law-abiding and contributory to the general welfare--members of the US House of Representatives have advocated discretion on the part of INS agents to ameliorate the matter. The thinking is that the direction for discretion will focus the attention of INS agents only on those immigrants who have engaged in major criminal activities, preferably since the respective law was passed.

However, discretion literally denotes affording an authority flexibility and latitude in whether and how to enforce law. While some decisions may be made in compliance with the stated intent of the House, others will be made in the opposite and other different directions. In fact, discretion is a slippery slope because it encourages a weakening of the rule of law and too easily induces an arbitrariness of application consonant with civil and criminal justice systems elsewhere in the world that are roundly castigated by House members. The House's mirror imaging of INS agents may well lead to even worse debacles of justice.

Instead of encouraging discretion as a "fix" to laws, the House should either work to replace them or mandate judicial review. (See Clarke, B.H. (1997). Hermeneutics and the "relational" turn: Schafer, Ricoeur, Gadamer, and the nature of psychoanalytic subjectivity. *Psychoanalysis and Contemporary Thought*, 20, 3-68; Cowan, G., Martinez, L., & Mendiola, S. (1997). Predictors of attitudes toward illegal Latino immigrants. *Hispanic Journal of Behavioral Sciences*, 19, 403-415; Esses, V. M., Jackson, L. M., & Armstrong, T. L. (1998). Intergroup competition and attitudes toward immigrants and immigration: An instrumental model of group conflict. *Journal of Social Issues*, 54, 699-724; Hagan, J., & Palloni, A. (1999). Sociological criminology and the mythology of Hispanic immigration and crime. *Social Problems*, 46, 617-632; Reeder, J. (1998). Hermeneutics and intersubjectivity: The interpreting dialogue. *International Forum of Psychoanalysis*, 7, 65-75.) (Keywords: Discretion, Immigration, INS.)